Synopsis of the criminal opinions by the Mississippi Supreme Court on April 10, 2008.

Miller v. State, No. 2007-KA-00798-SCT (Miss. April 10, 2008)

CRIME: Sale of Cocaine
DECISION: Affirmed
COUNTY: Winston
MAJORITY: Easley

FACTS: Chris A. Miller was convicted of selling cocaine and was sentenced to 20 years. On June 13, 2005, two MBN agents met with a confidential informant to prepare for an undercover drug buy in Winston County. The agents searched the CI and his vehicle for anything that might compromise the investigation. They equipped the CI with audio and video equipment, and issued him $60 to purchase crack cocaine. The CI got into his vehicle and drove to Miller Avenue while the agents conducted surveillance. The CI drove up to a residence where an individual, later identified as Chris Miller, was sitting on the front porch. Agents heard the CI ask for $60 worth of cocaine. The CI left the residence a few minutes later, and the agents followed him back to the meeting location. The CI handed agents a sealed bag which contained what was later tested and determined to be 0.52 grams of crack cocaine.

HELD: The verdict was not against the weight of the evidence. Miller claimed that the CI was untrustworthy and the video did not show any money being exchanged. The evidence consisted of testimony from the CI, two law enforcement officers, and an expert from the Crime Lab, as well as the admission of the videotape of the sale and a package of cocaine. Although the video did not depict an actual exchange of money, it did show Miller placing something into the CI's hand. The CI was a former drug user with a number of prior arrests and at least one probation violation. The testimony showed that the CI may have been forgetful, less than forthright, or even dishonest in some of his responses to questions posed regarding his past. Nevertheless, this was presented to the jury.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/Opinions/CO47825.pdf

Pruitt v. State, No. 2007-KA-00499-SCT (Miss. April 10, 2008)

CRIME: Armed Robbery
DECISION: Affirmed
COUNTY: Monroe
MAJORITY: Waller (Lamar concurs in result only)
DISSENT: Diaz, joined by Graves

FACTS: Joe Solomon Pruitt was convicted of armed robbery and was sentenced to 35 years with 5 years suspended. Loomis Fargo fired Alonzo Jones from employment as a delivery driver. Jones recruited his friends Pruitt and James Person to rob the Renasant Bank in Smithville, one of the

banks on his former route. Pruitt, Jones, and Person drove from Memphis to the Renasant Bank on the Loomis delivery day. Pruitt and Person, masked and gloved, entered the bank and forced the two employees to place the bank's cash into a backpack and a sack. Pruitt was armed with a handgun. Pruitt and Person left the bank and entered the car, where Jones waited. As they were leaving, a dye pack placed in Person's sack exploded, filling the car with smoke. He tossed the bag out the car window and they fled back toward Memphis. Law enforcement spotted the robbers near Fulton. Jones exited the highway at the next exit and they fled into the woods. They hid and slept in a shed. The following day, they tried to leave in a second car, which became stuck in a ditch. While attempting to free the vehicle, police arrived and they surrendered. Some of the stolen cash was found hidden inside a couch in the shed. Pruitt's only issue on appeal alleged a violation of *Batson*.

HELD: The State provided race neutral reasons even though the court found no prima facie case of discrimination. On appeal, Pruitt alleged the state's reasons were pretextual because the state failed to voir dire these jurors on the reasons for the strikes, and there was no record supporting the stated reasons. When the state voluntarily interrupts the ordinary procedure and offers race-neutral reasons for striking members of the venire before the court rules whether the defendant met his initial burden, the question whether the defendant met his initial burden is *not* moot.

==>There is no reason why the question of whether Pruitt met his initial burden should be taken from the trial court's consideration simply because the state voluntarily acted out of turn. Pruitt's initial burden would become moot if the state volunteered its race-neutral reasons for its strikes and the trial court ruled on the merits (or ultimate question) without first determining whether Pruitt had made his prima facie showing. Since the trial court found that Pruitt did not make a prima facie showing before ruling on the ultimate question, Pruitt's initial burden was not mooted.

==>The record does not contain any evidence which would raise an inference that the state used its peremptory strikes purposefully to discriminate on the basis of race. The state exercised its peremptory strikes on less than 50% of the African-Americans on the panel. Therefore, Pruitt failed to meet his burden of making a prima facie showing of purposeful discrimination on the basis of race in the state's exercise of peremptory strikes as required by *Batson*.

==>"As an addendum to this opinion, we must take exception to the trial court's actions in directing the lawyers to select the jury outside its presence....The application of [U.R.C.C.C. 4.05B] requires, at the time the peremptory strikes are made, the presence of the judge to rule on any challenge, and the court reporter to record the arguments and rulings."

[Diaz dissented, arguing that the requirement of establishing a prima facie case of intentional discrimination becomes moot after the State provides reasons for their strikes. "The majority's position on this issue of federal constitutional law is also contrary to the position taken by virtually every other court that has considered this issue."]

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/Opinions/CO46724.pdf

Finn v. State, No. 2006-CT-00393-SCT (Miss. April 10, 2008)
[COA's June 26, 2007 reversal of trial court's denial of PCR reversed]

CRIME: Possession of Pseudoephedrine
DECISION: COA's reversal of PCR denial, reversed; Denial of PCR by the trial court affirmed
COUNTY: Lee
MAJORITY: Smith
DISSENT: Lamar, joined by Dickinson
DISSENT: Graves, joined by Diaz

FACTS: Steven Finn pled guilty in July of 2005 to possession of pseudoephedrine and was sentenced to 5 years with 3 suspended. Finn was indicted under § 41-29-313(2)(c)(i) for unlawfully possessing pseudoephedrine in a quantity greater than 15 grams. Finn possessed 180 commercially manufactured and unaltered tablets of pseudoephedrine at the time of his arrest. Finn subsequently filed a PCR which was dismissed. Finn appealed, claiming the statute does not criminalize the possession of greater than 15 grams of pseudoephedrine if the drug is solely in dosage form. He claimed that he did not have over 250 dosage units, so he did not commit a crime. The court ordered the State to respond. The State argued the statute criminalized possession of over 250 unit dosages or possession of more than 15 grams. The court subsequently dismissed Finn's motion and he appealed. The COA reversed, finding that the legislature in § 41-29-313 established that dosage units are to be considered the standard form of measuring unlawful possession of pseudoephedrine or ephedrine. The weight of the drug is considered a default measurement for those cases where the drug is not found in a "dosage unit" form. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting these drug cases. The Supreme Court granted certiorari.

HELD: The COA erred in finding that §41-29-313(2)(c)(i) requires that dosage units be the preferred units of measure for ephedrine and pseudoephedrine. §41-29-313(2)(c)(i) makes it "unlawful to purchase, possess, transfer or distribute two hundred fifty (250) dosage units ***or*** fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine." It appears that the provision for the weight measurement of 15 grams is an alternative to the measure of 250 dosage units.

==>Finn argued that the weight of the drug is only to be considered as an alternative when the drug does not appear in dosage form. "To do so would be to tread on the domain of the Legislature, as it alone has the power to create and modify statutes." §41-29-139 specifically provides what is to be done when the controlled substance does not fall within the definition of dosage units. But the statute is silent as to those that do fall within the definition of "dosage units." When the drug falls under the definition of "dosage unit," the state has prosecutorial discretion under § 41-29-313 to base the charges on the dosage units or on the weight of the drug. The COA erred by reading too much into the definition section referenced in the statute.

[Graves dissented, arguing the clear language of §41-29-139 states that only when a drug does not

fall into dosage units should weight be used. It was clear Finn had 180 dosage units. The majority's opinion is contradictory to the plain language of the statute. Lamar also dissented, finding that the statute is clearly ambiguous given the various opinions from the Courts.]

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/Opinions/CO47265.pdf

Also of note:

In Re: Hosea Hines, No. 2006-CA-02107-SCT (Miss. April 10, 2008)

CRIME: Youth Court
DECISION: Order finding non-party in contempt is reversed
COUNTY: Rankin
MAJORITY: Graves

FACTS: A shelter hearing was held in the Pearl Municipal Youth Court of Rankin County regarding three minor children. Rev. Hosea Hines was present at the hearing, at which time Judge Shirley entered an order setting a shelter review hearing. Judge Shirley ordered that "[n]o one except that GAL, DHS, law enforcement and CAC shall discuss issues with the children." Later, for good cause shown, an order of no contact was entered, barring Rev. Hines from having contact with the minor children. A detective contacted Rev. Hines by telephone to inform him of the entry of the no-contact order, and to inform him that he was to be present in court on November 14th. When Rev. Hines failed to appear in court on November 14th a show-cause contempt warrant was issued for him and he was later arrested. The youth court prosecutor filed a motion for contempt. Judge Shirley found Rev. Hines in civil contempt and ordered him to pay a fine of $500. Rev. Hines appealed.

HELD: The youth court held that the detective's telephone conversation with Hines constituted sufficient notification of his need to appear in court under the Youth Court Act, and that M.R.C.P. 81 is not applicable to youth courts. §43-21-153 clearly authorizes the youth court to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and carrying out the purpose of the chapter. While the youth court had the power to enter the no contact order with respect to Rev. Hines, and to require his presence in court, Rev. Hines should have received the due process consideration of official written notification commanding his presence in court.

==>Even if Rev. Hines had been properly served with a copy of the order, the order itself does not contain sufficient language to have informed Rev. Hines that he had to be present in court. Because Rev. Hines is not the parent, guardian or custodian, guardian ad litem, or counsel to the minor children, reasonable oral notice as required by § 43-21-309, when the youth court is holding a detention or shelter hearing, is insufficient.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/Opinions/CO47428.pdf

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